

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.15741 of 2022

K.Elangovan

...Petitioner

Vs.

The Sub-Registrar,
Avalpoondurai Sub-Registrar Office,
Erode District.

...Respondent

PRAYER : The Writ Petition filed under Section 226 of the Constitution of India, pleaded to issue a Writ or direction or order more particularly in the nature of Writ of Certiorarified Mandamus calling for records pertaining to the Refusal Check Slip in refusal number RFL/Avalpoondurai/40/2022 dated 13.04.2022 and to quash the same as illegal and incompetent and consequently direct the respondent to register the decree dated 26.08.2016 passed in A.S.No.1 of 2007 on the file of the II Additional District Judge, Erode by confirming the Judgment and decree dated in 11.11.2003 in O.S.No.629 of 2021.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.Yogesh Kannadasan
Special Government Pleader

O R D E R

Writ Petition has been filed seeking for issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the Refusal Check Slip in refusal number RFL/Avalpoondurai/40/2022 dated 13.04.2022 and to quash the same as illegal and incompetent and consequently direct the respondent to register the decree dated 26.08.2016 passed in A.S.No.1 of 2007 on the file of learned II Additional District Judge, Erode by confirming the Judgment and decree dated 11.11.2003 in O.S.No.629 of 2021.

2. The case of the petitioner is that he filed a Suit in O.S.No.629 of 2001 on the file of Principal District Court, Erode dated 11.11.2003 for injunction and other reliefs and the same was decreed in favour of the petitioner. Thereafter, the defendants in the said suit filed an appeal in A.S.No.1 of 2007 on the file of learned II Additional District Judge, Erode and

the said appeal was dismissed on 26.08.2016, by confirming the Judgement and decree dated 11.11.2003. While so, the petitioner presented the certified copy of the same before the respondent on 13.04.2022 and the same was refused on the ground of delay in presenting the same. While so, the petitioner has come up with the present Writ Petition seeking the aforesaid relief.

3. The learned counsel for the petitioner submitted that the issue arises in the present case has already been settled by this Court on several orders that mere delay will not deny the right of the register to renew the encumbrance of the property. In support of his contention, the learned counsel relied upon the judgment of the Hon'ble Division Bench of this Court in W.A.No.336 of 2019 dated 07.02.2019. Accordingly, he prays to allow the writ petition.

4. The learned Special Government Pleader appearing for the Respondent did not dispute the facts submitted by the learned counsel for the petitioner.

5. Heard the learned counsel appearing for the Petitioner and the learned Special Government Pleader for the Respondents and perused the materials placed on record.

6. The issue involved in the present writ petition is covered by the earlier Order passed by the Hon'ble Division Bench of this Court in W.A.No.336 of 2019, dated 07.02.2019. The relevant portions of the order are extracted here under:

'6. The legal question involved in the instant case is as to whether the respondent could have refused registration of the said decree passed in O.S. No.6 of 1968 dated 29.4.1970 on the ground that it was presented beyond the time limit prescribed under Section 23 of the Act. Since the legal question is no longer res integra and the respondent having not taken note of the legal issue, this Court is of the view that said the writ petition is maintainable and the appellant need not be driven to avail the alternate remedy available under the Act. Accordingly, the preliminary objection raised by the learned Additional Government Pleader stands rejected.

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13. As pointed out by us earlier, we need to first address the legal issue, which arises for consideration as to whether at all the law of limitation as prescribed under Section 23 of the Act would apply to a court decree.

14. This question is no longer res integra and

this Court has consistently held that the law of limitation will not apply when a court decree is presented for registration. Earliest of the decisions, which has been followed consistently by a Division Bench of this Court is in the case of A.K. Gnanasankar Vs Joint-II Sub-Registrar, Cuddalore-2 [reported in 2007 (2) TCJ 68]. In the said decision, this Court held that the limitation prescribed for presenting a document does not apply to a decree, as it is a permanent record of the court and to register the same, no limitation is prescribed.

15. This decision was followed by one of us (TSSJ) in W.P.No.9352 of 2015 dated 31.3.2015 [B.Vijayan Vs. District Registrar & another]. Subsequently, a similar view had been taken by this Court in W.P.No.8247 of 2016 dated 07.3.2016 [G.Mudiyarasan & another Vs. Inspector General of Registration], which once again relied upon the decision in the case of A.K.Gnanasankar. Further, in the case of Arun Kumar Vs. Inspector General of Registration [W.P.No.16569 of 2016 dated 06.6.2016], this Court directed registration of a judgment and decree passed by the Principal District Munsif Court, Salem by condoning the delay on an application filed by the person presenting the document and in that decision, this Court referred to the decision in the case of Rasammal Vs. Pauline Edwin & others [reported in 2011 (2) MLJ 57] wherein the Court considered the scope of Section 25 of the Act.

16. Again, in the case of P.A.Duraisamy Vs. Registrar, Registration Department, Coimbatore & another [W.P.No.2824 of 2013 dated 26.10.2016], an identical view had been taken following the decision in the case of A.K.Gnanasankar. A similar view was taken in the case of Lakshmi Vs. Sub-Registrar, Valapady, Salem District [reported in 2017 (1) LW 721] wherein it was pointed out that the Proviso to Section 23 of the Act states that a copy of the decree may be presented within four months from the date, on which, the decree or order was made or where it is appealable, within four months from the day, on which, it becomes final, that the limitation prescribed under Section 23 of the Act should be read with in consonance with Section 25 of the Act and that since they were only directory in nature, the check slip issued by the respondent therein was held to be bad in law.

17. In the case of A1362 Meenakshi Cooperative Building Society Ltd. Vs. District Registrar &

Others [WP (MD) No.5108 of 2018 dated 12.4.2018], this Court followed the decision in the case of A.K. Gnanasankar and directed registration of the court decree. In yet another decision in the case of Dr.Sulochana Vs. Inspector General of Registration [reported in 2017 (2) CWC 489], this Court held that registration is only a part of procedural law and that though the Statute is fiscal, the doctrine of purposive and reasonable interpretation has application. This Court took note of the decision of the Karnataka High Court in the case of Anjinamma Vs. Puttahariyappa [reported in AIR 2003 Karnataka 24].

18. The Hon'ble Supreme Court in the case of Shreenath Vs. Rajesh [reported in 1998 (4) SCC 543], held that in interpreting any procedural law, when more than one interpretation is possible, the one, which curtails the procedure without eluding justice, is to be adopted, that the procedural law is always subservient to and is in aid of justice and that any interpretation, which eludes or frustrates the recipient of justice, is not to be followed.

19. A Full Bench of the Andhra Pradesh High Court in the case of Padala Satyanarayana Murthy Vs. Padala Gangamma [reported in AIR 1959 AP 626] answered a reference as to whether Section 77 of the Indian Registration Act bars a suit on the basis of an unregistered Will, when the Sub-Registrar refused to admit it for registration. It was held that Section 17 of the Act enumerates the documents, which require registration and the effect of failure to observe it is stated in Section 47 and that under Section 18(c) of the Act, the registration of a Will is purely optional and that being so, the Full Bench expressed that they did not think that the consequences contemplated by Section 49 would flow from not having recourse to Section 77 of the Act. It was further held that a party cannot be compelled to get document registered if such an obligation is not cast by the provisions of the Registration Act, that the necessity for registration arises only in regard to document set out in Section 17, that no penalty can attach to the omission to get a document registered when it is excepted by Section 17 and that therefore, the Full Bench felt that Section 77 can have relation only to instrument falling within the ambit of Section 17.

20. The decision in the case of Padala Satyanarayana Murthy was followed by the Allahabad

High Court in the decision in the case of Rama Pati Tiwari Vs. District Registrar, Allahabad [reported in AIR 2009 Allahabad 102].

21. By applying the decision in the case of Padala Satyanarayana Murthy to the facts of the case, the only conclusion that could be arrived at is that a court decree is not compulsorily registerable and that the option lies with the party. In such circumstances, the law laid down by this Court clearly states that the limitation prescribed under the Act would not stand attracted.

22. Having set out the legal position in the above terms in favour of the appellant, now we proceed to examine as to whether there was any delay in presentation of the decree and in other words, whether the court decree was presented beyond the period of four months.

23. The decree in O.S.No.6 of 1968 was passed on 29.4.1970. This decree was the subject matter of challenge in C.S.No.149 of 1980, in which, the judgment was delivered on 28.10.1995. Challenging the said decree dated 28.10.1995, an appeal was filed before a Division Bench of this Court in O.S.A.No.299 of 1996, in which, the appellant herein was the first respondent. One of the issues, which was framed for consideration by the Division Bench, was as to whether the compromise decree dated 29.4.1970 passed in O.S.No.6 of 1968 on the file of the Principal District Court, Puducherry, is not binding on the plaintiff's share. The Division Bench dismissed the appeal by judgment and decree dated 20.3.2002. Challenging the said judgment and decree dated 20.3.2002, a special leave petition in SLP. (C).No.8268 of 2002 was filed and it was dismissed vide order dated 01.11.2002.''

7. Accordingly, this Writ Petition is allowed and the impugned order passed by the respondent dated 13.04.2022 is set aside and the respondent is directed to register the decree in A.S.No.1 of 2007 dated 26.08.2016 passed by the learned II Additional District Judge, Erode, if otherwise in order and after receipt of necessary Stamp duty, registration charges. No costs.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

RAP

To

The Sub-Registrar,
Avalpoondurai Sub-Registrar Office,
Erode District.

+1cc to Mr.M.Guruprasad, Advocate Sr.No.39939

+1cc to the Government Pleader Sr.No.40075

W.P.No.15741 of 2022

SKM(CO)
RVM(20/07/2022)